IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 8, 2008 Session

STEVEN L. FARMER v. SUSAN B. STARK

Appeal from the Chancery Court for Williamson County
No. 30201 R.E. Lee Davies, Chancellor

No. M2007-01482-COA-R3-CV - Filed March 27, 2008

The trial court modified father's child support based upon a decrease in his income that resulted in a significant variance under the child support guidelines. On appeal, mother disputes the trial court's failure to include in father's income withdrawals from retirement accounts and the personal benefit from a truck used in his business. Mother further argues that the trial court erred in failing to order an upward deviation from the child support guidelines for special expenses. In addition, mother assigns error to the trial court's rulings regarding tax exemptions and the reasonableness of father's business expenses. We have determined that the trial court should have considered as income any portion of the retirement account withdrawals representing an increase in the value of those accounts since the divorce. Otherwise, we affirm the decision of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part, Vacated and Remanded in Part

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., J., and RICHARD H. DINKINS, J., joined.

Tammy D. Wendt-Mahew, Nashville, Tennessee, for the appellant, Susan B. Stark.

Christina Ferrell Daugherty, Franklin, Tennessee, for the appellee, Steven L. Farmer.

OPINION

I. FACTUAL BACKGROUND

Susan Stark and Steven Farmer were divorced on October 19, 2004. At that time, their three children were 14, 11, and 10 years old. Pursuant to the permanent parenting plan, Ms. Stark was the primary residential parent with Mr. Farmer having residential parenting time one night a week and every other weekend. Mr. Farmer was to pay child support of $3,041.00 per month, based upon a net income of $89,000.00 per year. The parenting plan also provided that the monthly child support would decrease to $2,400.00 per month upon the oldest child's emancipation. The parties agreed

to an upward deviation of the guidelines whereby the child support would remain at the same level after the emancipation of the second child. Mr. Farmer was given the tax deductions for all three children; if Ms. Stark earned $20,000.00 per year, the parties agreed to reevaluate the allocation of the tax deductions. Mr. Farmer was to reimburse Ms. Stark for the children's health insurance coverage.

Pursuant to the parties' marital dissolution agreement, Ms. Stark was awarded the marital home, which was unencumbered. Mr. Farmer agreed to pay transitional alimony of $2,400.00 per month for 42 months. Thereafter, he agreed to pay $3,000.00 per month in transitional alimony for an additional 126 months. The marital dissolution agreement specified that the transitional alimony "may not be modified and shall cease only upon [Ms. Stark's] death." Mr. Farmer received two Dreyfus IRA accounts titled individually in his name, and Ms. Stark received two Dreyfus IRA accounts titled in her name. Funds contained in two SEP IRA's were divided equally between the parties.

On July 21, 2006, Mr. Farmer filed a Petition to Modify Custody, Alimony and Insurance Provisions of the Marital Dissolution Agreement and Permanent Parenting Plan.[1] Mr. Farmer alleged that his actual gross income in 2004 was $81,122.00, which was significantly lower than the amount of gross income necessary to have a net income of $89,000.00, the amount upon which the original child support award was based. He further alleged that his gross income in 2005 was $80,179.00. Mr. Farmer therefore requested a modification of child support based upon a significant variance under the child support guidelines. Mr. Farmer also requested a modification of alimony and a modification of the life insurance provisions of the marital dissolution agreement.

The case was heard on October 17, 2006. Mr. Farmer's accountant, Mr. Charles Washam,[2] testified about Mr. Farmer's income during the relevant time period. Mr. Farmer's tax returns for 2004 and 2005, which were admitted into evidence, showed business income of $81,122.00 and $71,400.00, respectively. These figures took into account ordinary and necessary business expenses, but did not reflect self-employment taxes. Based upon Schedule C of Mr. Farmer's tax returns, Mr. Washam calculated his gross income to be $131,000.00 for 2004 and $112,000.00 for 2005. Mr. Washam was also asked to review Mr. Farmer's tax returns for 2002 and 2003. He testified that none of the returns showed a net income of $89,000.00. Mr. Washam stated that he had advised Mr. Farmer that "your net business revenue is not as much as your court ordered payments" and that he was "on the path to bankruptcy."

Mr. Washam testified that Mr. Farmer had advised him that he paid his workers in the landscaping business with cash, which he did not report on his tax returns. Mr. Farmer also told Mr. Washam that the unreported cash and the amount he paid his workers was "a wash." Mr. Washam

[1] Despite the name given to this pleading, Mr. Farmer did not request a modification of custody.

[2] The transcript erroneously refers to Mr. Washam as Mr. Watson.

stated: "I think the income is not reported, it's the same as the ordinary necessary business expenses for the same number." Mr. Farmer did not list the labor expenses on his tax return.

The court went through a description of self-employment income, specifying that the guidelines allow the deduction of reasonable business expenses, but do not allow credit for depreciation. The court then went through the figures for 2003 and 2004 with Mr. Washam and came up with gross income figures of approximately $63,000 and $89,000, respectively.

Mr. Farmer testified that he had two retirement accounts, which he had depleted to pay his taxes. He testified that the cash that came into his business was equal to or less than the amount he paid his laborers. He did not deduct the labor expense on his tax returns. In describing his financial struggles since the divorce, Mr. Farmer stated:

> My income, my bank account generally goes to zero or below at the first of each month and then I have to go to work to try to catch up with that. The only way I've been able to pay my taxes for the last two years is to take what little I have left after the divorce settlement, in retirement accounts. That is almost gone and in another year, will be at the way, way things go. I have no money.

Mr. Farmer testified that he had one checking account that he used for personal and business money. He was asked about the fact that the deposits in the checking account exceeding his reported income:

> Q. . . . You've stated that you've also cashed out other assets; is that correct?
> A. The only is my IRA, or my Dreyfus fund, I've had sent to my checking account from those, yes. Those were deposited into my checking account so I could write a check to the IRS or whatever.
> Q. Any other means of deposit into that account other that [sic] what you make off your business?
> A. Yes. There was a couple of occasions that I've deposited, for instance there was a check that my wife received from the man who was married to her mother when she died suddenly, and he sent $10,000 to her as a pay off actually. And deposited it into my account because we weren't sure we were going to, she was going to accept the check for one thing. But there have been instances maybe one or two like that where something that wasn't my income was deposited into my account, but it's generally mine.

Ms. Stark testified concerning her familiarity with Mr. Farmer's business. She had taken care of his financial records during the marriage and was familiar with the amount of cash and checks he brought in to support the family. Ms. Stark testified that this knowledge affected the negotiations concerning child support and alimony at the time of the divorce. Ms. Stark also testified about special expenses she regularly incurred for her children's school and extracurricular activities. As to extracurricular activities, including sports teams and band, Ms. Stark testified that she paid $450 to $500 per month. As to school expenses for items such as field trips and teacher gifts, she paid an

average of over $200 per month. Ms. Stark also testified that she spent as much as $3,600 a year for religious school and synagogue fees.

Ms. Stark testified about her business, the New York Cheesecake Company, as something she did off and on during and after the marriage. While she had made as much as $20,000 in the business years earlier, Ms. Stark stated that the business was no longer making much money. She benefitted from the tax deductions that the business allowed her to take. Ms. Stark testified, in accordance with her tax returns, that she sold investment accounts and mutual funds in 2004 and 2005 and then reinvested that money.

After hearing all of the proof, the court made findings on the issues of alimony and child support.[3] The court ruled that the transitional alimony was not modifiable. The court found that, based upon his tax returns for 2004 and 2005, Mr. Farmer had an average adjusted gross income of $80,282 a year. The court determined that there was a significant variance for child support purposes and that Mr. Farmer was entitled to an adjustment in his child support obligation under the new child support guidelines. The new child support figure was to be calculated based upon a monthly gross income of $6,690 for Mr. Farmer and $291 for Ms. Stark. In its order, entered on November 27, 2006, the court decreed that Mr. Farmer's child support obligation be modified to $1,722.00 per month, in accordance with an attached child support worksheet.

After the hearing, Ms. Stark retained new counsel. On December 27, 2006, Ms. Stark filed a Motion for Rehearing, or in the Alternative, to Alter or Amend. Ms. Stark also filed a motion for clarification regarding the allocation of the tax exemptions for the minor children.

A hearing on Ms. Stark's motions was held on February 20, 2007. The court decided to split the tax exemptions, with Ms. Stark claiming the 14-year-old child, Mr. Farmer claiming the 12-year-old child, and each claiming the 16-year-old child in alternate years, beginning with Ms. Stark for the 2006 tax year. The court denied Ms. Stark's motion to alter or amend or for a new hearing.

On appeal, Ms. Stark does not dispute the trial court's finding of a significant variance requiring a modification of child support. She does, however, disagree with the court's determination of the proper amount of child support. Ms. Stark presents the following issues: (1) Whether the trial court erred in calculating Mr. Farmer's income by failing to include withdrawals from retirement accounts; (2) Whether the trial court erred in calculating Mr. Farmer's income without taking into account the benefit of a vehicle used in his business; (3) Whether the trial court erred in failing to find that Mr. Farmer's business expenses were extraordinary and unreasonable; (4) Whether the trial court erred in failing to order an upward deviation from the child support guidelines based upon special expenses; (5) Whether the trial court erred in awarding the alternate

[3] At the hearing, Mr. Farmer did not pursue the insurance premium issue raised in his petition for modification. At the end of the hearing, Mr. Farmer's attorney told the court he was proceeding only on the two issues of alimony and child support.

residential parent tax exemptions for the minor children; and (6) Whether the trial court erred in denying Ms. Stark's Rule 59 motion.

II. Standard of Review

The standard of review of a trial court's findings of fact is de novo, and we presume that the findings of fact are correct unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *Rawlings v. John Hancock Mut. Life Ins. Co.*, 78 S.W.3d 291, 296 (Tenn. Ct. App. 2001). Issues of law are reviewed de novo with no presumption of correctness. *Nelson v. Wal-Mart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

Setting child support is a discretionary matter. *State ex rel. Vaughn v. Kaatrude*, 21 S.W.3d 244, 248 (Tenn. Ct. App. 2000). Thus, we review the amount of a child support award to determine whether the trial court abused its discretion. *Id.* Under the abuse of discretion standard, we must consider "(1) whether the decision has a sufficient evidentiary foundation; (2) whether the trial court correctly identified and properly applied the appropriate legal principles; and (3) whether the decision is within the range of acceptable alternatives." *Id.* at 248.

The statutes and regulations on child support are intended to "assure that children receive support reasonably consistent with their parent or parents' financial resources." *Kaatrude*, 21 S.W.3d at 249; *see also* Tenn. Comp. R. & Regs. 1240-2-4-.01(3)(e). Courts are therefore required to use child support guidelines developed by the Tennessee Department of Human Services "to promote both efficient child support proceedings and dependable, consistent child support awards." *Kaatrude,* 21 S.W.3d at 249; *see also* Tenn. Code Ann. § 36-5-101(e); Tenn. Comp. R. & Regs. 1240-2-4-.01(3)(b), (c). In January 2005, Tennessee's new child support guidelines, based upon the income shares model, took effect; the new guidelines apply in this case. *See* Tenn. Comp. R. & Regs. 1240-2-4-.01(2)(a).

III. Analysis

(1)

Ms. Stark argues that the money taken by Mr. Farmer out of his retirement accounts should be added to his gross income for child support purposes.

The child support regulations provide that gross income shall include "all income from any source," including "[p]ensions or retirement plans including, but not limited to, Social Security, Veteran's Administration, Railroad Retirement Board, Keoughs, and Individual Retirement Accounts (IRAs)." Ms. Stark asserts that this provision requires the inclusion of all of the retirement funds withdrawn by Mr. Farmer as part of his gross income. We disagree.

The language of the regulations refers to income from various sources, including retirement accounts. As a general rule, income from retirement accounts is to be considered part of gross income for child support purposes. Mr. Farmer testified that he made withdrawals from his

retirement accounts in order to pay taxes. However, the fact that the retirement accounts in this case were awarded to Mr. Farmer in the divorce necessitates further analysis. Part of the provisions defining marital property for purposes of property division in a divorce states that "assets distributed as marital property will not be considered as income for child support or alimony purposes, *except* to the extent the asset will create additional income after the division." Tenn. Code Ann. § 36-4-121(b)(1)(E) (emphasis added). Child support cases involving this provision have generally arisen with respect to capital gains. *See Moore v. Moore*, No. E2005-02469-COA-R3-CV, 2006 WL 2135451, *11 (Tenn. Ct. App. July 31, 2006), *aff'd*, No. E2005-02469-SC-R11-CV, 2007 WL 4326746 (Tenn. Sept. 5, 2007); *Eldridge v. Eldridge*, 137 S.W.3d 1, 22-23 (Tenn. Ct. App. 2002). *Moore* involved the issue of whether capital gains from a stock sale by the father should be considered gross income for child support purposes. *Moore*, 2006 WL 2135451 at *9. The father had been awarded the stock in the divorce settlement ten years before the sale. The Court of Appeals, relying on Tenn. Code Ann. § 36-4-121(b)(1)(E), concluded:

> The language of the statute clearly dictates that any portion of the sales price of Father's stock in Ed's Cycles, Inc., that represents *appreciation* in value, i.e., capital gain, *since* the divorce, is income that should be considered in the calculation of child support. The trial court erred when it concluded that *all* of the capital gain on the sale of Father's stock in Ed's Cycles, Inc., should not be considered in calculating Father's child support for the year 2002 and following years. Clearly, *some* of that capital gain was gross income to Father under the Guidelines.

Id. at *11. In affirming the decision of the Court of Appeals, the Supreme Court expressly overruled prior cases which held that an isolated or one-time capital gain should not be considered in calculating gross income for child support purposes. *Moore*, 2007 WL 4326746 at *3.

We believe that Tenn. Code Ann. § 36-4-121(b)(1)(E) and the child support guidelines lead to the same result with respect to retirement funds awarded to a parent during the divorce. The child support regulations expressly include retirement income and capital gains in the definition of gross income. Tenn. Comp. R. & Reg. 1240-2-4-.04(3)(a)(1)(viii), (xiii). Tenn. Code Ann. § 36-4-121(b)(1)(E) provides that assets awarded in the divorce cannot be considered income for child support purposes "except to the extent the asset will create additional income after the division." Thus, the withdrawals from Mr. Farmer's retirement accounts should be considered income to the extent that they represent an appreciation in the value of those accounts since the time of the divorce.

(2)

Ms. Stark next argues that the trial court should have added to Mr. Farmer's gross income the value of the personal benefit he received from a truck used in his business.

The child support guidelines provide that "[f]ringe benefits for inclusion as income or 'in-kind' remuneration received by a parent in the course of employment, or operation of a trade or business shall be counted as income if they reduce personal living expenses." Tenn. Comp. R. &

Reg. 1240-2-4-.04(3)(a)(4)(i). The guidelines further specify that fringe benefits might include a company car. Tenn. Comp. R. & Reg. 1240-2-4-.04(3)(a)(4)(ii). If, therefore, a parent receives a company car and thereby has a reduction in personal living expenses, the value of that benefit shall be included in gross income. In this case, however, the evidence adduced at trial did not provide a basis for the trial court to conclude that Mr. Farmer had received such a personal benefit. Mr. Farmer testified that he had a 1992 Ford Explorer and a 1988 F10 pickup truck. When Ms. Stark's attorney questioned him about his marketing efforts for his landscaping business, Mr. Farmer stated that he had signs on his "old truck," but not on his "new truck." Mr. Farmer's tax returns list "vehicle expense" as part of his business expenses, but do not specify what vehicle or vehicles are included. There is no evidence as to whether or how much Mr. Farmer used any business vehicles for his personal use.

The issue of Mr. Farmer's alleged personal use of a business vehicle was not developed or argued at the hearing. Thus, the trial court did not abuse its discretion in failing to increase Mr. Farmer's gross income to reflect this purported fringe benefit.

(3)

Ms. Stark argues that the trial court erred in failing to find Mr. Farmer's business expenses to be extraordinary and unreasonable.

The child support guidelines contain provisions applicable specifically to self-employment income. Tenn. Comp. R. & Reg. 1240-2-4-.04(3)(a)(3). Self-employment income includes "income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, rental properties, etc., *less ordinary and reasonable expenses necessary to produce such income*." Tenn. Comp. R. & Reg. 1240-2-4-.04(3)(a)(3)(i) (emphasis added). The regulations further state that "[e]xcessive promotional, excessive travel, excessive car expenses or excessive personal expenses, or depreciation on equipment, the cost of operation of home offices, etc., shall not be considered reasonable expenses." Tenn. Comp. R. & Reg. 1240-2-4-.04(3)(a)(ii).

Ms. Stark asserts that the reasonableness of Mr. Farmer's business expenses was not "actually litigated." She bases her argument upon the following exchange during the hearing, which occurred during the court's questioning of Mr. Washam, the accountant, about Mr. Farmer's 2003 tax return figures:

> THE COURT: . . . The guidelines are set up on a gross as opposed to a net. So you were given that things add up to $110,520. I think he is entitled to take some of these deductions off that number.
>
> THE WITNESS: I heard you say he's entitled to take all of them according to excessive with the exception of depreciation.
>
> . . . .

> THE COURT: So I wouldn't, you're the one that would have more knowledge of do [sic] you see anything excessive on the expense side of the ledger. Do you see anything excessive there?
>
> *MS. DAUGHERTY [Counsel for Mr. Farmer]*: No.
>
> THE COURT: Okay.
>
> THE WITNESS: You get $61,516 you add back $1518 from what you just read. You get $63,000.
>
> THE COURT: Right. That would be the number that the guidelines would tell us as we're plugging in the numbers.

(Emphasis added). Because the transcript shows that it was Mr. Farmer's attorney and not Mr. Washam who responded to the court's question about the reasonableness of Mr. Farmer's expenses, Ms. Stark argues that the issue was not "actually litigated." The reasonableness of Mr. Farmer's business expenses was an issue considered by the court, as evidenced by the court's extensive questioning of Mr. Washam and its statements concerning the applicable legal principles. We will, therefore, focus upon Ms. Stark's argument that the evidence does not support the court's conclusion that the business expenses were reasonable.

We will assume that the transcript accurately reflects that Mr. Washam did not respond to the question highlighted by Ms. Stark. Nevertheless, we cannot conclude that the evidence preponderates against the trial court's implicit determination that Mr. Farmer's business expenses as claimed on his tax returns were reasonable. During the court's questioning of Mr. Washam concerning Mr. Farmer's tax returns, Mr. Washam never identified any expenses that appeared to him to be unreasonable or extraordinary. In her brief, Ms. Stark argues that "inconsistencies inherent in [Mr. Farmer's] tax returns, combined with suspicious tactics, his contradicting testimony, and the fact that his attorney answered the question posed by the Trial Court regarding the reasonableness of his expenses, demonstrate the proof presented at trial of [Mr. Farmer's] extraordinary and unreasonable business expenses." We must disagree.

In support of her argument, Ms. Stark points to Mr. Farmer's deductions for vehicle expenses. She objects to his listing these vehicle expenses under Part V of his tax return rather than under Part II. Yet, there is nothing in this record to suggest the amount of these deductions was unreasonable. Ms. Stark did not question Mr. Farmer about these deductions at the hearing. A supposed contradiction identified by Ms. Stark in Mr. Farmer's testimony is his statement that he did not do a lot of marketing and advertising, but claimed a deduction of $1,898 in 2004 for advertising expense. She further highlights Mr. Farmer's testimony that his business's sponsorship of a swim team was "also a personal deal." Again, Ms. Stark did not question these alleged contradictions at the hearing nor did she argue that amounts claimed by Mr. Farmer for advertising were unreasonable. She basically asserts that it would be relatively easy for Mr. Farmer to exaggerate his expenses to artificially decrease his income. Ms. Stark did not, however, present any proof to show that Mr. Farmer had actually exaggerated his expenses.

We conclude that the trial court did not err in failing to find Mr. Farmer's business expenses to be unreasonable or unnecessary.

(4)

Ms. Stark argues that the trial court erred in failing to make an upward deviation from the child support guidelines based upon her special expenses for the children's activities and in failing to make written findings to justify its ruling.

The guidelines provide that "[s]pecial expenses incurred for child rearing which can be quantified *may* be added to the child support obligation as a deviation from the PCSO [presumptive child support order]." Tenn. Comp. R. & Reg. 1240-2-4-.07(2)(d)(2)(i) (emphasis added). Such special expenses include "summer camp, music or art lessons, travel, school-sponsored extra-curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social or cultural development of a child." *Id.* When these expenses exceed seven percent (7%) of the basic child support obligation, "the tribunal *shall consider* additional amounts of support as a deviation to cover the full amount of these special expenses." Tenn. Comp. R. & Reg. 1240-2-4-.07(2)(d)(2)(ii) (emphasis added). The italicized language in these provisions indicates that the guidelines allow, but do not require, deviations for special expenses. Special expenses *may* be added to the child support obligation; if the expenses exceed seven percent (as in this case), the court *shall consider* a deviation, but is not required to order a deviation. Tenn. Comp. R. & Reg. 1240-2-4-.07(2)(d)(2)(i), (ii).

Ms. Stark testified about the expenses she incurred for extracurricular activities and school-related expenses. At the end of the hearing, she again asked the court to take into account the special expenses to which she testified. Specifically, she requested consideration of extracurricular expenses of $480 a month and school expenses of $205 a month. The court considered this request and concluded that an award of special expenses "would break [Mr. Farmer]." The court found that Mr. Farmer "would be in worse shape than he was when he brought her in court" if such a deviation was ordered. The court also noted that, with alimony, Mr. Farmer's out-of-pocket obligations to Ms. Stark under the new order would be $4,128 a month. In light of Mr. Farmer's income of approximately $6,600 per month, the court stated: "If I make him pay anymore, I'm just setting him up to go to jail. So I'm just not going to do it."

We cannot conclude that the trial court abused its discretion in denying an upward deviation for special expenses, especially in light of the court's findings concerning Mr. Farmer's tight financial circumstances. Moreover, contrary to Ms. Stark's argument, the child support guidelines do not require written findings where there is no deviation from the presumptive child support order. Tenn. Comp. R. & Reg. 1240-2-4-.07(1)(c).

(5)

Ms. Stark assigns error to the trial court's decision regarding the tax exemptions. As discussed above, the court gave each parent an exemption for one of the three children and alternated the exemption for the oldest child. Ms. Stark argues that giving Mr. Farmer, the alternate residential parent, tax exemptions for some of the children is not consistent with the guidelines, is not warranted by the facts of this case, and requires a written finding to justify deviation from the guidelines.

Ms. Stark bases her argument on one of the taxation assumptions set out in the child support guidelines: "The alternate residential parent will file as a single wage earner claiming one withholding allowance, and the primary residential parent claims the tax exemptions for the child." Tenn. Comp. R. & Reg. 1240-2-4-.03(6)(b)(2)(ii). This court has previously held, however, that the quoted taxable assumption does not constitute a rule bearing on the trial court's discretion to award the tax exemptions. *See Eaves v. Eaves*, No. E2006-02185-COA-R3-CV, 2007 WL 4224715,*8 (Tenn. Ct. App. Nov. 30, 2007) (no Tenn. R. App. P. 11 application filed). Rather, "[t]he decision of a trial court regarding the allocation of exemptions for minor children is discretionary and should rest on facts of the particular case." *Chandler v. Chandler*, No. W2006-00493-COA-R3-CV, 2007 WL 1840818, *9 (Tenn. Ct. App. June 28, 2007) (no Tenn. R. App. P. 11 application filed).

In this case, the trial court did not abuse its discretion in awarding some of the exemptions to Mr. Farmer. In light of Ms. Stark's negligible income, Mr. Farmer stood to benefit more than Ms. Stark from the exemptions. Furthermore, since the guidelines do not require a certain allocation of the exemptions, this ruling did not constitute a deviation from the guidelines and thus did not require the court to make written findings.

(6)

Finally, Ms. Stark assigns error to the trial court's denial of her motion for rehearing or to alter or amend the judgment pursuant to Tenn. R. Civ. P. 59.

Our standard of review for a trial court's denial of a motion to alter or amend is the abuse of discretion standard. *Stovall v. Clarke*, 113 S.W.3d 715, 721 (Tenn. 2003). The purpose of Rule 59 motions "'is to prevent unnecessary appeals by providing trial courts with an opportunity to correct errors before a judgment becomes final.'" *Whalum v. Marshall*, 224 S.W.3d 169, 175 (Tenn. Ct. App. 2006) (quoting *Bradley v. McLeod*, 984 S.W.2d 929, 933 (Tenn. Ct. App. 1998)).

In her motion, Ms. Stark requested a rehearing and reopening of discovery or an order amending the judgment based upon her arguments addressed above relating to the reasonableness of Mr. Farmer's business expenses, vehicle use, and retirement funds as well as the argument that his income should be based on earnings from January 2006 through the date of the hearing. Ms. Stark requested another hearing to determine whether Mr. Farmer's business expenses as claimed on his tax returns were reasonable and necessary.

In an order entered on May 21, 2007, the court denied Ms. Stark's motion for rehearing or to alter or amend. As to the retirement funds, the court stated: "[C]hild support is not based on assets unless those assets produce income and the IRA from which Mr. Farmer withdrew funds was an asset he received in the divorce decree." The court concluded that Mr. Farmer's "withdrawals from his IRA and/or other retirement accounts, should not be added to his earning and included as income from which to based his child support obligation." The court further found that Mr. Farmer's "income was properly calculated and included all sources appropriate in accordance with the Child Support Guidelines." In refusing to grant a new trial, the court stated that "granting a new trial because certain issues were not addressed more thoroughly at the original trial is not appropriate; nor, is it appropriate because counsel did not ask enough questions, despite the Court's own inquiry of a witness." The court further concluded that "the issue of whether [Mr. Farmer's] business expenses are reasonable and necessary was explored to its maximum potential at the hearing and the Court finds no reason to grant another hearing to address that issue under Rule 59 of the Tennessee Rules of Civil Procedure."

The trial court found that Ms. Stark had already litigated or had a chance to litigate all of the issues and found no reason to hear additional evidence. We have concluded that the trial court did not abuse its discretion in denying Ms. Stark's motion to rehear or to alter or amend.

IV. CONCLUSION

For the reasons stated above, the trial court's ruling regarding the retirement accounts is vacated and remanded for a determination as to whether any of the withdrawn funds are attributable to an increase in the value of the accounts since the time of the divorce. If so, the value of the appreciation should be considered income to Mr. Farmer for child support purposes. In all other respects, the judgment of the trial court is affirmed.

Costs of appeal are assessed equally against the appellant and the appellee, for which execution may issue if necessary.

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ANDY D. BENNETT, JUDGE